

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 KENNETH HEARD, JR.,

7 Plaintiff,

8 v.

9 COSTCO WHOLESALE CORPORATION,
ET AL.,

10 Defendants.
11

Case No. 2:19-cv-00673-RFB-DJA

ORDER

12 This matter is before the Court on Defendants' Motion to Compel (ECF No. 55), filed on
13 October 22, 2020. Any response was due by November 5, 2020. No response has been filed to
14 date and Defendants filed a Notice of Plaintiff's Non-Opposition (ECF No. 57) on November 6,
15 2020. Plaintiff's failure to file points and authorities in response to the motion "constitutes a
16 consent to the granting of the motion." LR 7-2(d).

17 Moreover, the Court finds good cause to grant the motion to compel. First, as to
18 Defendants' request for dates for Plaintiff's deposition, the Court finds that request to be relevant
19 and proportional to the needs of the case. Defendants are entitled under the rules to depose
20 Plaintiff and Plaintiff's failure to communicate with defense counsel in order to schedule his
21 deposition is not excused as he is required to participate in this case if he intends to continue to
22 prosecute it. As a result, Plaintiff must respond to defense counsel within 2 weeks of this order to
23 provide Defendants with three dates/times in which he is available for his deposition. Defendants
24 will still be required to duly notice the deposition.

25 As to the requested Rule 35 mental examination, the Court finds it to be relevant and
26 proportional to the needs of the case. Plaintiff alleges various mental health conditions along
27 with severe emotional distress. Defendants seek a 3 hour oral examination by Dr. Greene and
28 two hours of psychological testing near Henderson, where Plaintiff resides. The Court will

1 permit such a request to proceed and compel Plaintiff to respond to defense counsel within 2
2 weeks of this order to provide Defendants with three dates/times in which he is available for the
3 Rule 35 examination. Defendants will still be required to duly notice the Rule 35 examination.

4 As for the requested authorizations, Defendants have shown that they have been unable to
5 receive the Rule 45 discovery due to the non-parties refusal to provide medical records without
6 authorization. The Court finds the medical records from Spring Mountain Treatment Center,
7 Sunrise Hospital, and St. Rose Dominican to be relevant and proportional to the needs of this
8 case. It will order Plaintiff to execute the authorizations provided by defense counsel as Exhibit
9 B within two weeks for the necessary release of the relevant records.

10 As for Defendants' request for attorneys fees for having to bring the motion, given that
11 Defendants succeeded in full, the Court will grant them the opportunity to seek fees. It will set a
12 briefing schedule for this request. Defendants shall meet and confer with Plaintiff in an attempt
13 to agree on an amount in good faith. To the extent an agreement cannot be reached, then
14 Defendants shall file their motion for attorneys' fees within 14 days of this Order. Plaintiff shall
15 have 14 days to file a response. Defendants may file a reply 7 days thereafter.

16 Finally, Defendants seek to extend discovery due to Plaintiff's failure to participate in
17 discovery (ECF No. 56), filed on October 26, 2020. They seek a 90 day extension of discovery in
18 order to complete the above-requested discovery, including Plaintiff's deposition, obtaining his
19 medical records, and completing the Rule 35 examination of Plaintiff. The Court will grant this
20 extension as it is supported by good cause and Plaintiff has also failed to oppose this request.

21 IT IS THEREFORE ORDERED that Defendants' Motion to Compel (ECF No. 55) is
22 **granted** as outlined above.

23 IT IS FURTHER ORDERED that Defendants shall meet and confer with Plaintiff
24 regarding the attorneys' fees requested for prevailing on the motion to compel and file a motion
25 for attorneys fees within 14 days of this Order if an agreement cannot be reached. A response and
26 reply may be filed within the normal briefing schedule.

27 IT IS FURTHER ORDERED that Defendants' Motion to Extend Discovery (ECF No. 56)
28 is **granted**.

1 IT IS FURTHER ORDERED that the following dates shall govern discovery:

2 Discovery cutoff February 17, 2021

3 Dispositive motions March 19, 2021

4 Joint pretrial order April 15, 2021

5
6 DATED: November 9, 2020.

7
8 

9 DANIEL J. ALBREGTS
10 UNITED STATES MAGISTRATE JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28